

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA
CHARLESTON DIVISION

B.P.J. by her next friend and mother, HEATHER JACKSON,

Plaintiff,

v.

WEST VIRGINIA STATE BOARD OF
EDUCATION, HARRISON COUNTY BOARD
OF EDUCATION, WEST VIRGINIA
SECONDARY SCHOOL ACTIVITIES
COMMISSION, W. CLAYTON BURCH in his
official capacity as State Superintendent, DORA
STUTLER in her official capacity as Harrison
County Superintendent, PATRICK MORRISEY in
his official capacity as Attorney General, and THE
STATE OF WEST VIRGINIA,

Defendants.

Civil Action No. 2:21-cv-00316

Hon. Joseph R. Goodwin

**PLAINTIFF’S MOTION FOR LEAVE TO FILE SURREPLY IN OPPOSITION TO
DEFENDANTS’ MOTION TO DISMISS**

Plaintiff, through counsel, moves the Court for an order granting Plaintiff permission to file a surreply on the two issues described below in the replies filed by Defendants Harrison County Board of Education and Dora Stutler (“County Defendants”) and Defendant West Virginia Secondary School Activities Commission (“School Activities Commission”) (collectively, “Defendants”) to Defendants’ motions to dismiss. (*See* Dkt. Nos. 83, 85). In support, Plaintiff states the following:

1. There is good cause to grant Plaintiff leave to file a five-page surreply addressing two new arguments that Defendants did not raise in their motions to dismiss, but raised for the first time in their replies.
2. Specifically, Defendants raised the following new arguments for the first time in their reply briefs:

- a. The County Defendants argued for the first time on reply that they are not liable under Title IX because they are unable to take “corrective action.” (Dkt. 85, at 3–4).
 - b. The School Activities Commission argued for the first time on reply that it is not liable under the Equal Protection Clause because it is not a state actor. (Dkt. 83, at 9–13).
3. Because these arguments were not raised in Defendants’ motions, Plaintiff did not have an opportunity to respond to these arguments in her opposition. Plaintiff therefore seeks leave to file a short surreply to briefly address Defendants’ new arguments.
4. The five-page proposed surreply, which is attached as Exhibit A, makes the points that Defendants’ new arguments should not be considered because they were not raised in Defendants’ Motions to Dismiss, and additionally that each argument lacks merit.
5. Courts in this district find good cause to file a surreply when a party raises arguments for the first time on reply. *See, e.g., Vandelinde v. Priority Auto. Roanoke, Inc.*, No. 7:20-CV-00330, 2021 WL 1113635, at *5 (W.D. Va. Mar. 23, 2021) (collecting cases).
6. Permitting Plaintiff to file a surreply will allow her to address all arguments raised by Defendants that should have been included in their opening motions and will be helpful to the Court in ensuring that all arguments raised by Defendants are fully addressed.

Accordingly, for the reasons stated above, Plaintiff respectfully requests that the Court grant her permission to file her surreply, attached hereto as Exhibit A. Plaintiff conferred with Defendants on August 27, 2021. Defendants oppose Plaintiff’s motion for leave to file a surreply.

Dated: August 27, 2021

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Loree Stark, do hereby certify that on this 27th day of August, 2021, I electronically filed a true and exact copy of *Plaintiff's Motion for Leave to File Surreply in Opposition to Defendants' Motion to Dismiss* with the Clerk of Court and all parties using the CM/ECF System.

/s/ Loree Stark

West Virginia Bar No. 12936